

**REMARKS**

The Examiner has initially required restriction under 35 U.S.C. §121 between Group I, claims 24-40, drawn to a film acoustic wave device, classified in class 310, subclass 334; and Group II, claims 41-59, drawn to a method of manufacturing an acoustic wave device, classified in class, subclass 25.35. Applicants respectfully elect Group I, including claims 24-40. The election has been made in order to comply with the requirements of 37 CFR 1.111. Applicants, however, respectfully traverse the Restriction Requirement for the following reasons.

Applicants respectfully request that the Examiner reconsider the restriction requirement since no serious burden would be presented to the Examiner by examining all of the claims in a single application.

As set forth in Section 803 of the MPEP, the Examiner must examine an application on the merits "if the search and examination of an entire application can be made without serious burden...even though it includes claims to independent or distinct inventions." Two criteria are identified for proper requirement for restriction:

1. The inventions must be independent or distinct as claimed; and

2. There must be a serious burden on the Examiner if the restriction is not required.

Applicants respectfully submit that a serious burden has not been placed on the Examiner to consider all of the claims in a single application. According to MPEP 803, a serious burden on the Examiner may be shown if the Examiner shows by appropriate explanation of separate classification. Referring to page 2 of the Office Action, the Examiner has shown that Group I is classified in class 310, however, the Examiner does not state in which class Group II is classified in. Therefore, there is a presumption that the classes of Group I and Group II are identical and a serious burden would not be placed on the Examiner.

In view of the above, Applicants respectfully request that the Examiner withdraw the restriction requirement and examine each of claims 24-59.

Regarding claims 17-23, Applicants file herewith an amendment, adding claim 60, which subject matter is based on canceled claim 16. Claims 17-23 have been amended to properly depend from claim 60.

#### **Conclusion**

In view of the above amendments and remarks, this application appears to be in condition for allowance and the Examiner is,

therefore, requested to reexamine the application and pass the claims to issue.

**Attached hereto is a marked-up version of the changes made to the application by this Amendment**

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Martin Geissler (Reg. 51,011) at telephone number (703) 205-8000, which is located in the Washington, DC area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 

Michael K. Mutter, #29,680

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000

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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

IN THE CLAIMS:

The claims were amended as follows:

17. (Once Amended) The manufacturing method of the film acoustic wave device according to claim [16] 60, wherein the step of changing the pattern shape includes a step of changing the length of the upper electrode by the position at the wafer.

18. (Once Amended) The manufacturing method of the film acoustic wave device according to claim [16] 60, wherein the step of changing the pattern shape includes a step of changing the width of the upper electrode by the position at the wafer.

19. (Once Amended) The manufacturing method of the film acoustic wave device according to claim [16] 60, wherein the step of forming the upper electrode forms a plurality of upper electrodes, and wherein the step of changing the pattern shape includes a step of changing the distance between the upper electrodes by the position at the wafer.

20. (Once Amended) The manufacturing method of film acoustic wave device according to claim [16] 60, and wherein the step of forming the upper electrode further includes a step of connecting of the

upper electrode to a bonding pad, and wherein the step of changing the pattern shape includes a step of changing a shape of the bonding pad by the position at the wafer.

23. (Once Amended) The manufacturing method of the film acoustic wave device according to claim [16] 60, further comprising a step for setting a capacitor on the same semiconductor substrate as the film acoustic wave device, and wherein the step of changing the pattern shape includes a step of changing a capacitance of the capacitor by the position at the wafer.

A new claim 60 was added.